

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

*Alexandria Division*

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 1:05-cr-00053
	)	
AHMED OMAR ABU ALI,	)	
	)	
Defendant.	)	

Government's Motion To Hold Case In Abeyance Pending  
Resolution Of Related Fourth Circuit Proceedings

The United States of America, through undersigned counsel, respectfully moves the Court to hold this case in abeyance pending the Fourth Circuit's resolution of related issues in *In re: Ahmed Abu Ali*, 19-392.

On October 2, 2019, Abu Ali filed the instant motion under 28 U.S.C. § 2255. (ECF No. 475). Abu Ali simultaneously filed a motion for authorization to file a successive application for post-conviction relief under 28 U.S.C. § 2244 in the Fourth Circuit. 19-392 (ECF No. 2). Abu Ali also asked the Fourth Circuit to hold his just-filed motion in abeyance pending this Court's resolution of his § 2255 motion. 19-392 (ECF No. 4). The Fourth Circuit ordered the government to respond, and on November 12, 2019, the government filed its opposition to Abu Ali's motion for authorization to file a successive § 2255 motion and to holding the case in abeyance. 19-392 (ECF No. 9) (Exhibit A).

A federal district court may consider a "second or successive" § 2255 motion only upon certification from the appropriate court of appeals that the motion meets certain criteria. 28 U.S.C. § 2255(h). Specifically, a successive § 2255 motion must be certified as provided in 28 U.S.C. §

2244 to contain:

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

*See* § 2255(h); *see In re Vassell*, 751 F.3d 267, 271 (4th Cir. 2014) (“Section 2255(h) requires a court of appeals considering whether to authorize a second or successive § 2255 motion to follow the gatekeeping procedure ‘provided in section 2244.’”). Under 28 U.S.C. § 2244(b)(3), “[t]he court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.” Because the Fourth Circuit is currently considering whether to even authorize Abu Ali’s now-pending § 2255 motion, the government requests that the Court hold this case in abeyance pending its resolution of § 2255(h)’s threshold, jurisdictional inquiry.<sup>1</sup>

Respectfully submitted,

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<sup>1</sup> Out of an abundance of caution, the government notes that this is not its formal response to Abu Ali's § 2255 motion, and any omissions from this or the attached pleading should not be construed as a waiver of those defenses or arguments.

Certificate of Service

I certify that on November 14, 2019, I electronically filed a copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

By: \_\_\_\_\_/s/

Joseph Attias  
Special Assistant United States Attorney